

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2008 Session

IN RE: B. T.

**Appeal from the Juvenile Court for Robertson County
No. D 27584 Melanie Stark, Special Judge**

No. M2008-00946-COA-R3-PT - Filed November 13, 2008

Mother appeals the termination of her parental rights. Her rights were terminated on the grounds of abandonment for failure to support and failure to provide a suitable home, substantial noncompliance with the permanent parenting plan, and persistence of conditions; additionally, the trial court determined that termination was in the best interests of the child. Mother appeals arguing that the Department did not make reasonable efforts towards reunification and that termination was not in the child's best interests. As an additional issue, Mother contends the trial court erred in granting the Department of Children's Services' Tenn. R. Civ. P. 60.02(2) Motion to Set Aside the dismissal of the termination petition. We find that the trial court did not abuse its discretion in setting aside the dismissal because the dismissal was granted based upon misrepresentations of the father of the child's half-sibling. We affirm the trial court's finding that the Department made reasonable efforts towards reunification and that Mother's parental rights should be terminated on the grounds of abandonment, substantial noncompliance with the permanent parenting plan, and persistence of conditions. We also find that termination was in the best interests of the child.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., and WALTER J. KURTZ, SR. J., joined.

Joe R. (Jay) Johnson, II, Springfield, Tennessee, for the appellant, B. T.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Preston Shipp, Assistant Attorney General, for the appellee, Department of Children's Services.

OPINION

Due to Mother's drug use during pregnancy, B.T., the minor child at issue, was born on April 25, 2005, with cocaine in his system. Because of this, the child was placed in state custody three days after his birth and the child has remained in state custody ever since.

Two months after his birth, the child was adjudicated dependent and neglected. A year later, on June 6, 2006, the Department filed a Petition to Terminate Parental Rights of Mother.¹ The petition alleged the grounds of abandonment for failure to visit, abandonment for failure to support, abandonment for failure to provide a suitable home, substantial noncompliance with the permanent parenting plan, and persistent conditions as the basis for termination. The Department also alleged that termination was in the best interest of the child due to the failure of Mother to change her conduct or circumstances, the failure of Mother to make changes to her lifestyle or conduct after reasonable efforts by the state, Mother's continual abuse of drugs, the lack of visitation between Mother and child, the lack of a meaningful relationship between Mother and child, and Mother's failure to support the child.

The case was originally set for trial on January 4, 2007; however, prior to that date the father of B.T.'s half-sibling – who had been named as the father of the minor child and had not yet been ruled out by genetic testing – filed a motion to intervene for the purpose of seeking custody of B.T. Based upon its finding that the Department should have, but failed to consider him for placement, the court dismissed the termination petition. Subsequently, the father of B.T.'s half-sibling notified the trial court that he did not want custody of B.T.; he only wanted his child to have the right to visit B.T.

Based upon this material development, the Department filed a Tenn. R. Civ. P. 60.02(2) Motion to Set Aside the dismissal of its petition to terminate Mother's parental rights. The Department argued the dismissal should be set aside because it was obtained through a misrepresentation of an adverse party, the father of a half-sibling. The trial court agreed with the Department and entered an order setting aside the dismissal and reinstating the petition. Thereafter, the petition to terminate Mother's parental rights was set for trial.

The trial on the petition was held on March 19, 2008. The Department presented testimony from caseworkers who had worked with Mother since the child was taken into custody. Mother's first caseworker was Kelly Dawson, who drafted the initial parenting plan on May 18, 2005. The plan required Mother to stay drug-free, support her child, complete a parenting assessment, obtain stable housing and employment, and continue taking her prescribed medications.² Ms. Dawson testified that she attempted to get Mother help for her drug problems numerous times. She arranged for Mother to receive outpatient treatment from Cumberland Heights in July 2005, but Mother refused to discontinue her prescription medications in order to receive the treatment, despite her physician's approval. Ms. Dawson also attempted to enroll Mother in a treatment program in December 2005 and February 2006. She tried to help Mother obtain employment by bringing her job applications and making arrangements to take Mother to the unemployment office and possible job

¹The petition also sought to terminate the parental rights of the child's father, the identity of whom was uncertain. Mother named a man as the child's potential father. That man and the "unknown father" of the child were named as defendants in the petition to terminate the father's rights. The father's rights were terminated and he has not appealed. Thus, the father's rights are not at issue in this appeal.

²A revised permanency plan was adopted on October 19, 2005, with substantially the same requirements.

sites, yet Mother cancelled these appointments. Mother flatly refused efforts to help her find public housing, and despite arrangements being made and funds being paid for Mother to attend parenting assessments and classes, Mother never participated.

Mother's next caseworker was Caleb Rose, who was her caseworker from March 2006 until September 2007. A revised parenting plan was entered on March 28, 2006, following Mr. Rose's placement on the case, which shifted the goal from reunification to adoption due to Mother's lack of cooperation and efforts. Despite Mr. Rose's suggestions, Mother continued to refuse public housing as an option for a residence. Mother was again provided with the number for Pathfinders, but made no efforts to enroll in drug treatment. The efforts of Mr. Rose to aid Mother in the requirements of her permanency plan were hampered by the fact that Mother disappeared for two months without notifying the Department how to contact her.

As of the filing of the petition in June 2006, Mother had stopped seeing her psychiatrist, she had stopped taking her prescription medications, she had not completed a drug treatment program and she did not have stable employment or suitable housing. Mother, however, presented evidence that she had made efforts and achieved modest successes since the filing of the petition, including obtaining her GED, finally completing a drug treatment program and a parenting class, and obtaining employment. She stated that she was attending Alcoholics Anonymous and Narcotics Anonymous; however, this positive fact was negated when it was disclosed that Mother had failed a drug test in January 2006, testing positive for marijuana. Moreover, a doctor who had performed two psychological assessments and one clinical assessment of Mother, testified that he had concerns about Mother's ability to remain sober.

At the time of trial, Mother did not have independent or appropriate housing. Instead, she resided in her mother's home with her mother and her brother. Her brother, who had his own drug problems, had resided with them until his arrest the week before the trial started. Testimony was also presented that her mother had a history of mental illness and suicidal ideation.³

The current guardian of the minor child, a relative of Mother, testified that the child had been in the guardian's custody for more than two years, since he was ten months old, and described the child as "well-adjusted" and "happy." Testimony was also presented that the child, who was three years old at the time of trial, viewed his current guardians and their two children as his family. There was also evidence that Mother had little contact with the child during his two-year placement with the current guardian; while the child was located a significant distance away, Mother maintained virtually no telephone communication with her child.⁴

³ Fortunately, the grandmother was taking psychotropic medication to deal with her mental health issues.

⁴ Mother initially had maintained some telephone contact, however, following an incident in which Mother insulted the guardian's teenage daughter, Mother was instructed that all telephone conversations would have to be supervised by the Department.

On April 3, 2008, the trial court entered an order terminating Mother's parental rights. The court found the Department had proven by clear and convincing evidence the grounds of abandonment by failure to support, substantial noncompliance with the requirements of the permanency plan, abandonment by failure to provide a suitable home, and persistence of conditions. The trial court also determined that it was in the best interests of the child to terminate Mother's parental rights because Mother had not made any adjustment in her circumstances, conduct, or conditions as to make it safe and in the child's best interests to return to her care, and there would be a detrimental effect in a change of caregivers on the child. The trial court, however, agreed with Mother on one issue, finding the placement of the child in Ohio placed an undue burden on Mother to visit her child and, therefore, the Department had not proven the ground of abandonment for failure to visit. This appeal followed.

ISSUES

Mother presents three issues. One, she contends the trial court erred in granting the Department's motion to set aside the order dismissing the petition to terminate. Two, she contends the Department failed to make reasonable efforts to reunify her with her child. Three, she contends it is not in the best interests of the child that her parental rights be terminated. We will discuss each in turn.

ANALYSIS

I.

MOTION TO SET ASIDE DISMISSAL

Mother claims the trial court erred in granting the Department's Motion to Set Aside the dismissal of the petition to terminate her parental rights. Under Tennessee Rule of Civil Procedure 60.02(2), an order may be set aside for "misrepresentation, or other misconduct of an adverse party." The trial court granted the Rule 60.02(2) motion based on what it found to be misrepresentations by the father of a half-sibling.

"In reviewing a trial court's decision to grant or deny relief pursuant to Rule 60.02, we give great deference to the trial court. *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003) (citing *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993)). The trial court's ruling will not be set aside absent a finding that it abused its discretion. *Id.* "An abuse of discretion is found only when a trial court has 'applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.'" *Id.* (quoting *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002)). "The abuse of discretion standard does not permit an appellate court to merely substitute its judgment for that of the trial court." *Id.* (citing *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)).

We have determined the trial court did not abuse its discretion by setting aside the dismissal and reinstating the petition to terminate Mother's parental rights. We, therefore, affirm the trial

court's grant of the Department's Rule 60.02(2) motion setting aside the voluntary dismissal of the petition to terminate parental rights.

II.

TERMINATION OF PARENTAL RIGHTS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination, such as abandonment or failing to remedy persistent conditions that led to the removal of the child. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838. Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. See *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to proving one of the grounds for termination, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). Therefore, a court may terminate a person's parental rights if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is clearly and convincingly established that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed *de novo* with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at *2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810).

The issue of substantial noncompliance with the requirements of a permanency plan is a question of law; therefore, it is reviewed *de novo* with no presumption of correctness. *In re Valentine*, 79 S.W.3d at 546 (citing *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002)).

III. GROUNDS FOR TERMINATION AND REASONABLE EFFORTS

Section 36-1-113(g) of the Tennessee Code identifies nine statutory grounds for the termination of parental rights. *See* Tenn. Code Ann. § 36-1-113(g)(1)-(9) (2008). The trial court terminated Mother's parental rights on the grounds of abandonment by failure to support, substantial noncompliance with the permanency plan, abandonment by failure to provide a suitable home, and persistence of conditions. Significantly, Mother does not challenge the grounds on appeal, at least not directly. Instead, she contends the Department failed to make reasonable efforts to reunify her with her child or to assist her in completing the requirements under her permanency plan.

Her argument is principally based on the fact the Department placed the child with a relative in Ohio when the child was ten months old.⁵ As she describes it, the placement of her child in Ohio, made it extremely difficult for her to visit, that it was a "crushing psychological blow" and that it made completing the requirements of the permanency plan difficult. We agree with Mother, to the extent that the Department's placement of the child in Ohio placed too great a burden on Mother to *visit* the child. This circumstance was properly addressed by the trial court, which found that the Department had not met its burden of proving by clear and convincing evidence that Mother had abandoned her child by failing to *visit*, citing the mandates placed upon the Department in the *Brian A.* settlement. This circumstance, although unfortunate, did not relieve Mother of her duty to make reasonable and appropriate efforts to rehabilitate herself and to remedy the conditions that required the Department to remove B.T. from her custody. *See In re A. R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *16 (Tenn. Ct. App. Dec. 13, 2007); *see also In re Giorgianna H.*, 205 S.W.3d 508, 519 (Tenn. Ct. App. 2006).

A.

One of the grounds for terminating Mother's rights was for substantial noncompliance with the permanent parenting plan under Tenn. Code Ann. § 36-1-113(g)(2). When terminating a parent's rights on the ground of substantial noncompliance, the trial court must find that the requirements of the permanency plan, which the parent allegedly failed to satisfy are "reasonable and related to remedying the conditions which necessitate foster care placement." *In re Valentine*, 79 S.W.3d at 547 (quoting Tenn. Code Ann. § 37-2-403(a)(2)(C)).

Termination on the ground of substantial noncompliance with the permanency plan implicates the Department's obligation to demonstrate that it made reasonable efforts to reunite a child with his parent. Tenn. Code Ann. § 37-1-166(b); *see also In re R.L.F.*, No. M2008-00050-COA-R3-PT, 2008 WL 3069588, at *5 (Tenn. Ct. App. July 31, 2008). "Where the Department seeks to terminate parental rights on a ground that implicates the Department's obligation to use reasonable efforts to make it 'possible for the child to return safely to the child's home,' Tenn. Code

⁵The child was placed with a relative in Ohio after previous attempts to place the child with relatives near Mother failed.

Ann. §§ 37-1-166(a)(2), -166(g)(2), those reasonable efforts must be proved by clear and convincing evidence.” *In re R.L.F.*, 2008 WL 3069588, at *8 (citing *In re B.B.*, No. M2003-01234-COA-R3-PT, 2004 WL 1283983, at *9 (Tenn. Ct. App. June 9, 2004)). The Department has the burden to prove by clear and convincing evidence that it exercised reasonable care and diligence to provide services reasonably necessary to meet Mother’s needs to assist her to fulfill her obligations under the permanency plans. Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d at 546; *In re C.M.M.*, 2004 WL 438326 at *8. This burden requires that the Department present sufficient evidence to enable us to conclude, without serious or substantial doubt, that the efforts were reasonable under the circumstances. *In re Valentine*, 79 S.W.3d at 546; *In re C.D.B.*, 37 S.W.3d 925, 927 (Tenn. Ct. App. 2000); see *Walton v. Young*, 950 S.W.2d 956, 960 (Tenn.1997).

“The success of a parent’s remedial efforts generally depends on the Department’s assistance and support.” *In re Giorgianna H.*, 205 S.W.3d at 518. Accordingly, the Department’s employees have an affirmative duty to utilize their education and training to assist parents in a reasonable way to address the conditions that led to the child’s removal and to complete the tasks stated in the plan. *In re Giorgianna H.*, 205 S.W.3d at 519; *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541862, at *14 (Tenn. Ct. App. June 30, 2005); *In re C.M.M.*, 2004 WL 438326, at *7; *In re D.D.V.*, No. M2001-02282-COA-R3-JV, 2002 WL 225891, at *8 (Tenn. Ct. App. Feb.14, 2002). This duty exists even if the parent does not ask for assistance. *In re C.M.M.*, 2004 WL 438326, at *7. The importance of the Department’s role in this regard has been emphasized by this court on numerous occasions. *In re B.L.C.*, No. M2007-01011-COA-R3-PT, 2007 WL 4322068, at *8 (Tenn. Ct. App. Dec. 6, 2007) (no Tenn. R. App. P. 11 application filed); *In re C.M.M.*, 2004 WL 438326, at *7 (stating that “[i]n many circumstances, the success of a parent’s remedial efforts is intertwined with the efforts of the Department’s staff to provide assistance and support”); *In re J.A.W.*, No. M2007-00756-COA-R3-PT, 2007 WL 3332853, at *4 (Tenn. Ct. App. Nov. 8, 2007); *In re Randall B., Jr.*, No. M2006-00055-COA-R3-PT, 2006 WL 2792158, at *5-6 (Tenn. Ct. App. Sept. 28, 2006).

Reasonable efforts are statutorily defined as the “exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family.” Tenn. Code Ann. § 37-1-166(g)(1). The factors the courts are to use to determine reasonableness include: (1) the reasons for separating the parents from their children, (2) the parents’ physical and mental abilities, (3) the resources available to the parents, (4) the parents’ efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parents’ efforts to address the problems that caused the children’s removal, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department’s efforts. *In re Tiffany B.*, 228 S.W.3d 148, 158-59 (Tenn. Ct. App. 2007) (footnote omitted) (citing *In re Giorgianna H.*, 205 S.W.3d at 519).

The goals and requirements of permanency plans must be directed toward remedying the conditions that led to the child’s removal from the parent’s custody. *In re Valentine*, 79 S.W.3d at 547; *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004); *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003). The goals and requirements of Mother’s permanency plan were to stay drug-

free, support her child, complete a parenting assessment, and obtain stable housing and employment. These requirements were reasonably related to the reasons that led to the child's removal. The child was placed in state custody immediately after his birth, after being born with cocaine in his system, and Mother had a long history of drug abuse. These goals were reasonably related to helping Mother deal with her drug addiction and provide a safe and stable home environment for her child.

As we have frequently held, the Department bears a heavy responsibility with regard to reunification; nevertheless, the road to reunification is a 'two-way street.' *In re A. R.*, No. W2008-00558-COA-R3-PT, 2008 WL 4613576, at *16 (Tenn. Ct. App. Dec. 13, 2007) (quoting *State Dep't of Children's Servs. v. S.M.D.*, 200 S.W.3d 184, 198 (Tenn. Ct. App. 2006)). Parents desiring to be reunited with their children have a corresponding duty to "make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove their children from their custody." *Id.* (quoting *In re Giorgianna H.*, 205 S.W.3d at 519). While the Department bears a heavy responsibility to facilitate reunification, it does not bear the entire responsibility. *Id.* (citing *State Dep't. of Children's Servs v. S.M.D.*, 200 S.W.3d at 198).

The evidence presented at the hearing demonstrates that Mother was provided with numerous resources in order to meet the requirements of her parenting plan and was unable to do so. Kelly Dawson, Mother's first caseworker, had attempted to enroll her in three different treatment programs. Ms. Dawson had also attempted to help her find employment and housing. Caleb Rose, Mother's caseworker following Ms. Dawson, also attempted to help Mother but faced difficulties in reaching Mother. The record shows that Mother's caseworkers attempted to aid her in meeting the requirements of the permanency plan. Their efforts, however, were continuously hampered by the lack of cooperation by Mother, either by her cancelling appointments or refusing to discontinue taking her prescription medications in order to participate in drug treatment. The proof showed that at the time the termination petition was filed, Mother had no employment, no stable housing, and had completed no treatment programs. Additionally, Mother had provided no support to her child.

Based upon the foregoing, we find the Department made reasonable efforts to aid Mother in completing the requirements of her permanency plan, and that the Department demonstrated by clear and convincing evidence that Mother was in substantial noncompliance with the plan.

B.

The ground of abandonment by failure to provide a suitable home under Tenn. Code Ann. § 36-1-102(1)(A)(ii) provides for termination when:

The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of a parental rights petition is filed

finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

Tenn. Code Ann. § 36-1-102(1)(A)(ii) (2008).

We have already discussed the reasonable efforts of the Department in helping Mother to obtain both stable housing and employment. Mother did not have stable housing during the four months preceding the filing of the petition. At trial, Mother testified to the instability of her housing situation following her child's placement in state custody. She resided in hotels or with family members, and often depended upon her mother to pay her rent and utilities. At the time of trial, Mother still resided with her mother and still depended on her for support. She testified that she would continue to reside with her mother if custody was returned to her. However, the testimony of both Mother's counselor and caseworker demonstrated their concerns regarding the safety of residing with her mother, who had mental health issues, and the possible return of her brother, who had drug problems, to the residence. Based upon the evidence in the record, we affirm the trial court's finding of abandonment by failure to provide a suitable home.

C.

Termination was also found under the ground of persistence of conditions, which is defined in Tennessee Code Annotated section 36-1-113(g)(3) as follows:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, [*44] therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;

Tenn. Code Ann. § 36-1-113(g)(3). This ground for termination applies "where the prior court order removing the child from the parent's home was based on a judicial finding of dependency, neglect, or abuse." *In re Audrey S.*, 182 S.W.3d 838, 874 (Tenn. Ct. App. 2005).

In this case, the minor child was removed from Mother's home due to her drug use. He was adjudicated dependent and neglected based upon cocaine being found in his system and the drug abuse of Mother during her pregnancy. Testimony demonstrated that prior to the filing of the petition Mother had failed to cooperate with attempts to drug test her and had not completed any drug treatment programs. Mother also testified that in the months following removal her living situation was very unstable and she admitted being "on drugs very bad" at one point. Based on this, we find that the conditions which necessitated the removal of the child were still present, making it unsafe to return the child to Mother's care. Therefore, we affirm the trial court's ruling on the ground of persistent conditions.

D.

Parental rights may also be terminated upon the ground of abandonment for willfully failing to support, or willfully failing to make reasonable payments toward the support of the child. Tenn. Code Ann. § 36-1-102(1)(A)(i). A parent abandons a child if for a period of four consecutive months immediately preceding the filing of a petition to terminate the parental rights of the parent, it is established that the parent willfully failed to support, or willfully failed to make reasonable payments toward the support of the child. Tenn. Code Ann. § 36-1-102(1)(A)(i). Mother admits that she made no payments in support of her child, though she occasionally provided toys and clothes. While she claimed that she was unaware of the requirement to support, Mother signed at least three permanency plans, all of which included the requirement that Mother make payments to support her child; and, yet she never did. Although Mother struggled financially, the record reveals that she was gainfully employed during the four months preceding the filing of the petition and that she had the means to make payments toward the support of the child, yet she made no payments of any amount. We, therefore, affirm the trial court's finding that Mother abandoned her child by failing to support.

III.

BEST INTERESTS OF THE CHILD

Based on our determination that the Department established grounds for termination, we must now consider whether the Department has established the second essential element of whether termination of the parent's rights is in the child's best interests. *See* Tenn. Code Ann. § 36-1-113(c)(2); *In re A.W.*, 114 S.W.3d 541, 545 (Tenn. Ct. App. 2003); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). In determining whether termination of parental rights is in the best interests of the child, the court shall consider, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parents or guardians home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i)(1)-(9) (2008).

The foregoing list is not exhaustive, and the statute does not require every factor to appear before a court can find that termination is in a child's best interest. *See In re S.L.A.*, 223 S.W.3d 295, 301 (Tenn. Ct. App. 2006) (citing *State of Tennessee Dep't of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-JV, 2002 WL 970434, at *3 (Tenn. Ct. App. May 10, 2002); *In re I.C.G.*, No. E2006-00746-COA-R3-PT, 2006 WL 3077510, at *4 (Tenn. Ct. App. Oct. 31, 2006)).

The trial court determined that termination was in the best interests of the child based upon their finding that Mother had failed to adjust her circumstances, conduct, or conditions as to make

it safe for her child to return to her care, that Mother continued to struggle with substance abuse, that Mother was still dependent on others for her housing, and that she had only maintained her current job for a short period of time. The court also found that a change in caretakers would be detrimental to the child.

The evidence in the record clearly and convincingly supports the trial court's determination that termination of Mother's parental rights is in the best interests of the child. Mother failed to adjust her circumstances to care for the child. Testimony demonstrated that she still did not have a stable environment in which to live and she tested positive for drugs a few months prior to trial. The testimony of the child's current guardian showed the child was happy and well-adjusted, and the child considered his guardians and their children as his family.

The best interests of the child are to be determined from the perspective of the child rather than the parent. *See L.H.*, No. M2007-00170-COA-R3-PT, 2007 WL 2471500, at *7 (Tenn. Ct. App. Aug. 31, 2007)(citing *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004)). Viewing the evidence from the children's perspective, the record shows clear and convincing evidence that the termination of Mother's parental rights is in the child's best interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Department of Children's Services.

FRANK G. CLEMENT, JR., JUDGE